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August 28, 2014

MEMORANDUM

TO: The Commission

FROM: Lisa J. Stevenson
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Compliance Advice

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SUBJECT: Request for Extension to Make Final Repayment of Unspent Convention Funds – Committee on Arrangements for the 2012 Republican National Convention (LRA 947)

I. INTRODUCTION

The Committee on Arrangements for the 2012 Republican National Convention (“Committee”) submitted a Request for Extension to Make Final Repayment of Unspent Convention Funds (“extension request”) on August 21, 2014. The Committee’s extension request raises two points to support good cause for the extension: 1) the timing of the Commission’s issuance of the Final Audit Report (“FAR”); and 2) the practical considerations which would result in a more accurate amount of unspent convention funds being repaid and publicly disclosed. The Office of General Counsel does not believe that the first point is good cause for granting the extension, but we recommend that the Commission grant the extension based on the second point. We set forth the reasoning supporting our recommendation after we discuss the procedural background of this audit.

II. PROCEDURAL BACKGROUND

The Commission approved the FAR on August 18, 2014. The FAR included the Commission’s determination that the Committee’s unspent funds, totaling \$668,674 as of July 31, 2014, are repayable to the U. S. Treasury. All unspent funds must be repaid to the U.S. Treasury no later than 24 months after the last day of the convention, unless the

national committee has been granted an extension of time. 11 C.F.R. § 9008.12(b)(5)(iii). The last day of the Republican National Convention was August 30, 2012. Therefore, the Committee's repayment is due by August 30, 2014. The Committee requests an extension to September 30, 2014 to make its final repayment to the U.S. Treasury of unspent convention funds.

III. THE COMMISSION SHOULD GRANT THE COMMITTEE'S REQUEST FOR AN EXTENSION OF TIME

A. The Committee Incorrectly Contends That The Commission's Timing In Issuing the FAR Constitutes Good Cause

The Commission may grant a request for an extension to repay unspent convention funds, 11 C.F.R. § 9008.12(b)(5)(iii), so long as the convention committee demonstrates good cause in support of its request.¹ 11 C.F.R. § 9008.15(b) The Committee asserts that good cause for an extension exists because there are only eleven days between the date the Commission approved the Final Audit Report and the August 30, 2014 deadline for the Committee to repay its unspent funds to the U.S. Treasury. *See* Attachment. The Committee contends that eleven days is an insufficient amount of time to properly wind down its operations. *Id.* The Committee asserts that extending the repayment period by 30 days would allow it to prudently wind down its operations and provide Audit staff with actual (as opposed to estimated) financial information to determine whether any adjustments to the repayment determination are warranted. *Id.* The Committee contends that an extension is also appropriate because corresponding regulations at 11 C.F.R. § 9007.2(d)(2) allow for an extension of up to 90 days for repayment if a candidate requests an administrative review of the Commission's repayment determination.² *Id.*

The Committee's contention regarding the Commission's timing in issuing the FAR does not demonstrate good cause for an extension. 11 C.F.R. § 9008.15(b). First, the repayment of unspent funds is self-executing. Commission regulations provide that unspent funds must be repaid within 24 months of the last day of the convention. 11 C.F.R. § 9008.12(b)(5)(iii). The obligation to repay these funds within 24 months is not contingent on the Commission issuing a final repayment determination pursuant to Section § 9008.12(a)(2), as the Committee suggests. *See Dukakis v. Federal Election Commission*, 53 F.3d 361 (D.C. Cir. 1995) (Examining a candidate's repayment obligations under the Presidential Primary Matching Payment program, the court concluded that the unspent funds repayment provision is self-executing and requires no

¹ The convention committee must also submit the extension request seven days before the repayment is due. 11 C.F.R. § 9008.15(c). The Committee submitted the request seven days before the repayment was due. Therefore, there is no dispute about the timeliness of the request.

² The Commission's rules governing the public financing of national nominating conventions provide that audits of convention committees must follow the procedures for audits of presidential campaign committees set forth at 11 C.F.R. §§ 9007.1 and 9038.1. 11 C.F.R. § 9008.11.

Commission-initiated conduct). The Committee has not disputed that it has unspent funds that it must repay. Thus, it is obligated to make the repayment by August 30, 2014.

Second, the repayment of unspent public funds and the final audit report process proceed under different timing tracks. While a convention committee must repay unspent public funds within 24 months of the last day of the convention, 11 C.F.R. § 9008.12(b)(5)(iii), the Commission has up to three years after the convention to issue the final audit report. 11 C.F.R. §9008.12(a)(2).³ We, therefore, do not believe the timing of the Commission's approval of the FAR demonstrates good cause to grant the extension request.

B. Practical Considerations Related to A More Accurate Repayment and Public Disclosure of the Committee's Repayment Constitute Good Cause For Granting The Extension Request

We believe, however, that practical considerations related to the Committee's making a more accurate unspent funds repayment and to ensuring accurate public disclosure do establish good cause for granting the extension request. The Committee contends that it would be able to repay the U.S. Treasury the actual amount of its unspent funds instead of an amount based on estimated financial information, as reflected in the FAR, if it is given an additional 30 days. The Committee represents that upon winding down, it will give the auditors concrete financial information that would allow additional adjustments to its repayment obligation to be made. The Audit Division agrees that the Committee will be able to provide the most accurate financial information at the conclusion of its wind down and notes that the information the Committee provides may affect its surplus/deficit calculation allowing for a more accurate repayment. The Audit Division also indicates that allowing the Committee additional time will enable the Committee to more accurately disclose its activities because the final disclosure reports will reflect actual financial information. Based on this information, we recommend that the Commission grant the Committee's request for an extension to September 30, 2014, to make its final repayment of unspent convention funds to the U.S. Treasury.⁴

³ The Committee's reliance on 11 C.F.R. § 9007.2(d)(2) as a basis for an extension of time to repay is misplaced. Administrative reviews under this provision (which allows for an extension of up to 90 days to make a repayment) pertain only to disputed repayment determinations – not undisputed unspent funds. 11 C.F.R. § 9007.2(d)(2). The Committee has not sought administrative review of the FAR's repayment determination because there is no issue in contention to serve as a basis for an administrative review.

⁴ While the Committee's request for an extension of time is pending, the Committee will have a *de facto* extension of time of the original repayment deadline of August 30, 2014. The Audit Division has informed the Committee of this fact.

IV. THE COMMISSION SHOULD UPDATE THE PUBLIC RECORD TO SHOW THE AMOUNT OF UNSPENT PUBLIC FUNDS IF THE AMOUNT IS DIFFERENT FROM THE FINAL AUDIT REPORT

If the Commission grants the extension request and the Committee shows a repayment amount that is different from the amount in the FAR, the Commission should consider updating the public record. The repayment determination in the FAR is the Commission's repayment decision for the Committee, 11 C.F.R. § 9008.12(a)(1), and on August 25, 2014, the Commission released the FAR to the public showing that the Committee had a repayment obligation totaling \$668,674 in unspent public funds. 11 C.F.R. § 9007.1(e)(2). The public record, therefore, should be updated if the Committee demonstrates that its repayment is either less than or greater than the repayment determination set forth in the FAR.⁵

If the Committee shows a greater amount of unspent convention funds than is reflected in the FAR, the public record can be updated with an addendum audit report that explains the difference between the repayment amount in the FAR and the increased amount. If that is the case, the Audit Division would ask the Commission to authorize an addendum to the FAR pursuant to 11 C.F.R. § 9038.1(d)(3), based on information ascertained by the Commission in the normal course of carrying out its supervisory responsibilities.⁶

If, however, the Committee shows a lesser amount of unspent convention funds than is forth in the FAR, the public record can be updated with an administrative review. With the consent of the Committee, the Commission can treat the submission as a request for an administrative review so long as the submission is made within 60 calendar days after service of the FAR.⁷ This step is important because a publicly-financed committee is only justified in repaying an amount less than the repayment determination set forth in the audit report if the committee seeks an administrative review and the Commission

⁵ The Committee should submit to the Audit Division all records and information detailing its repayment.

⁶ Addenda to the audit report may be approved and issued by the Commission from time to time as circumstances warrant and as additional information becomes available. 11 C.F.R. § 9038.1(d)(3). Such addenda may be based on follow-up fieldwork conducted under section 9038.1(b)(3) and/or information ascertained by the Commission in the normal course of carrying out its supervisory responsibilities. *Id.* The procedures set forth in section 9038.1(c) and (d)(1) and (2) will be followed in preparing such addenda. *Id.* The addenda will be placed on the public record as set forth in section 9038.1(e). *Id.* Such addenda may also include additional repayment determinations. *Id.*

⁷ A committee that disputes the Commission's determination(s) shall submit in writing, within 60 calendar days after service of the Commission's notice, legal and factual materials demonstrating that no repayment, or a lesser repayment, is required. *See* 11 C.F.R. § 9007.2(c)(2)(i). The Committee will meet this timing requirement if it submits a lesser repayment amount by the new repayment due date. The extension will make the repayment due on September 30, 2014. The FAR was served on the Committee on August 19, 2014; therefore, the Committee has until October 19, 2014 to dispute the FAR's repayment determination.

makes a final determination in the administrative review that a lesser amount is owed. 11
C.F.R. § 9007.1(d)(1).

V. RECOMMENDATIONS

1. Grant the Committee on Arrangements for the 2012 Republican National Convention's Request for Extension to Make Final Repayment of Unspent Convention Funds to September 30, 2014.

2. Approve the appropriate letter.

Attachment

Letter from Heather Sidwell Morris to Thomas E. Hintermister dated
August 21, 2014.